

Message Text

PAGE 01 STATE 059755

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S: MR. BARBIAN

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TO AMEMBASSY GUATEMALA PRIORITY

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E.O. 11652: NA

TAGS:

SUBJECT: DELTA-FLOMERCA DISPUTE:LAUGERUD-FORD LETTER

1. FOLLOWING IS TRANSLATION OF TEXT OF LETTER AND
MEMORANDUM GIVEN TO SECRETARY KISSINGER IN GUATEMALA ON
FEBRUARY 24. LETTER IS ADDRESSED TO PRESIDENT FORD. COPY
OF SPANISH ORIGINALS BEING PO CHED.

2. QUOTE: MR. PRESIDENT:

(PARA 1) SEIZING THE OPPORTUNITY OFFERED BY THE WELCOME
AND TIMELY VISIT TO GUATEMALA OF DR. HENRY A. KISSINGER,
SECRETARY OF STATE OF YOUR COUNTRY, I TAKE GREAT PLEASURE
IN CONVEYING TO YOU, THROUGH HIM, MY WARM GREETINGS AND IN
SENDING YOU WITH THIS NOTE A COPY OF THE MEMORANDUM
SUBMITTED TO ME BY THE MINISTER OF ECONOMY.

(PARA 2) THAT MEMORANDUM, WITH WHICH I AM FULLY IN
AGREEMENT, REFLECTS MY GOVERNMENT'S OFFICIAL POSITION WITH
RESPECT TO THE CONFLICT THAT EXISTS BETWEEN THE DELTA
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PAGE 02 STATE 059755

STEAMSHIP LINES OF THE UNITED STATES OF AMERICA AND THE
FLOTA MERCANTE GRAN CENTROAMERICANA (FLOMERCA) (CENTRAL
AMERICAN MERCHANT FLEET) OF GUATEMALA.

(PARA 3) I AVAIL MYSELF OF THIS OCCASION TO RENEW TO YOU, MR. PRESIDENT, THE VERY SPECIAL ASSURANCES OF MY HIGH ESTEEM AND DISTINGUISHED CONSIDERATION. (SIGNED) K.E. LAUGERUD. END QUOTE.

2. TEXT OF MEMORANDUM:

QUOTE: TO: GENERAL KJELL EUGENIO LAUGERUD GARCIA, PRESIDENT OF THE REPUBLIC. FROM: EDUARDO PALOMO ESCOBAR, MINISTER OF ECONOMY. SUBJECT: GOVERNMENT OF THE UNITED STATES INSISTS ON REPEAL OF DECREE 41-71 OF THE CONGRESS OF THE REPUBLIC. DATE: FEBRUARY 23, 1976.

(PARA) 1. IN 1971 THE CONGRESS OF THE REPUBLIC OF GUATEMALA ENACTED DECREE 41-71 (SEE ANNEX 1) TO PROTECT NATIONAL AIR OR SEA TRANSPORT COMPANIES. THAT LAW PROVIDES THAT IMPORTERS OF GOODS WHICH ARE EXEMPTED FROM IMPORT DUTIES UNDER THE INDUSTRIAL DEVELOPMENT LAWS MUST ARRANGE FOR THE TRANSPORT OF THE GOOD WHICH THEY IMPORT INTO THE COUNTRY, WHETHER BY SEA OR AIR, BY NATIONAL CARRIERS. VIOLATIONS OF THIS PROVISION ARE SUBJECT TO A FINE EQUAL TO 50 OF THE FREIGHT PAID.

(PARA) 2. IN 1973 THE DELTA LINES, A UNITED STATES COMPANY, CONFERRED WITH FLOMERCA, A NATIONAL COMPANY, ABOUT A PARTNERSHIP AGREEMENT WHEREBY IT COULD ENJOY A WAIVER AND THUS BE ABLE TO TRANSPORT ALL OF ITS CARGO TO AND FROM GUATEMALA WITHOUT HAVING THE AFORESAID PENALTY APPLIED TO IT.

(PARA UNNUMBERED) SINCE SUCH A PARTNERSHIP AGREEMENT COULD NOT BE ACCEPTED BY FLOMERCA, IN 1974 THE DELTA LINES FILED CHARGES WITH THE FEDERAL MARITIME COMMISSION (FMC) AND THE OFFICE OF THE SPECIAL REPRESENTATIVE OF THE PRESIDENT OF THE UNITED STATES FOR TRADE NEGOTIATIONS.

(PARA) 3. THE RESULT OF THE AFORESAID CHARGES WAS THAT THE LIMITED OFFICIAL USE
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PAGE 03 STATE 059755

FMC DECLARED THAT DECREE 41-71 WAS DISCRIMINATORY AND AGREED TO IMPOSE ON THE GOVERNMENT OF GUATEMALA "EQUALIZATION" SANCTIONS, WHICH CONSIST IN THE PROVISION THAT ALL CARGO ORIGINATING IN THE UNITED STATES AND DESTINED FOR GUATEMALA WHICH IS CARRIED BY GUATEMALAN NATIONAL LINES OR LINES ASSOCIATED THEREWITH MUST PAY 50 OF THE CARGO'S VALUE IN ADDITION TO THE NORMAL OCEAN FREIGHT CHARGE. FURTHERMORE, GUATEMALA COULD BE EXCLUDED FROM THE TARIFF PREFERENCE TREATMENT GRANTED BY THE UNITED STATES DEVELOPING COUNTRIES.

(PARA) 4. SINCE THE MIDDLE OF LAST YEAR THE DEPARTMENT OF

STATE, THROUGH ITS EMBASSY IN GUATEMALA AND THROUGH THE AMBASSADOR OF GUATEMALA IN WASHINGTON, HAS BEEN ASKING FOR THE REPEAL OF DECREE 41-71, AND IS INSISTING ON THAT REPEAL, DESPITE THE FACT THAT IN JANUARY 1976 FLOMERCA AND THE DELTA LINES AGREED ON THE BASES FOR CONCLUDING A PARTNERSHIP AGREEMENT THAT WILL PERMIT DELTA LINES TO ENJOY THE PERTINENT WAIVER AND OPERATE FROM THE UNITED STATES TO GUATEMALA. PHOTOCOPIES ARE ATTACHED OF ANNEXES 2 AND 3, SUBMITTED BY THE UNITED STATES EMBASSY IN GUATEMALA, WHICH DEMONSTRATE THE AFORESAID PRESSURE OF THE DEPARTMENT OF STATE, IN TERMS TOTALLY INACCEPTABLE TO GUATEMALA.

(PARA) 5. THE PETITION IS CONSIDERED UNACCEPTABLE FOR THE FOLLOWING REASONS:

(PARA)(A) GUATEMALA HAS THE RIGHT, AS DO OTHER DEVELOPING COUNTRIES, TO PROTECT AND DEVELOP ITS MERCHANT MARINE. IN 1975 GUATEMALA PAID NEARLY US\$88 MILLION FOR TRANSPORT.

(PARA)(B) THE UNITED STATES HAS PROTECTIONIST LAWS THAT COULD ALSO BE CALLED DISCRIMINATORY, SUCH AS THE 1918 SHIPPING ACT; THE JONES ACT, FOR INTERCOASTAL SHIPPING; AND PUBLIC LAW 480, WHICH SPECIFIES THE USE OF UNITED STATES FLAG VESSELS FOR THE TRANSPORT OF CARGO FINANCED BY EXIMBANK, AID, OR IDB SPECIAL FUNDS, IN DOLLARS. IN OTHER WORDS, GUATEMALAN VESSELS DO NOT HAVE FREE ACCESS TO ALL OF THE FREIGHT GENERATED IN THE UNITED STATES.

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PAGE 04 STATE 059755

(PARA)(C) DECREE 41-71 GIVES PREFERENCE ONLY TO GUATEMALAN VESSELS OR TO VESSELS OF ASSOCIATED LINES INSOFAR AS INDUSTRIAL DEVELOPMENT CARGO IS CONCERNED, LEAVING OPEN THE REST OF GENERAL CARGO, PLUS ALL OF THE EXPORT CARGO. IN THIS SENSE GUATEMALAN SHIPPING LEGISLATION IS MILD, COMPARED WITH OTHER PROTECTIONIST LAWS THAT EXIST IN ALMOST ALL OF THE LATIN AMERICAN COUNTRIES. IN BRAZIL, VENEZUELA, ARGENTINA, URUGUAY, CHILE, PERU, AND COLOMBIA THERE HAVE BEEN PROTECTIONIST LAWS FOR MORE THAN 20 YEARS THAT RESERVE 50 OF TOTAL CARGO FOR NATIONAL SHIPPING COMPANIES.

(PARA)(D) THE DEVELOPMENT OF THE MERCHANT MARINES OF THE LATIN AMERICAN AND OTHER DEVELOPING COUNTRIES IS THE DIRECT CONSEQUENCE OF RESOLUTIONS AND RECOMMENDATIONS. ALL OF THESE MEASURES AND LAWS WHICH THE COUNTRIES OF LATIN AMERICA HAVE BEEN ADOPTING TO DEVELOP THEIR NATIONAL MERCHANT MARINES ARE THE DIRECT CONSEQUENCE OF RESOLUTIONS AND RECOMMENDATIONS THAT HAD THEIR BEGINNING WITH THE

CONFERENCE OF CHAPULTEPEC OF 1945 AND CULMINATED WITH UNCTAD III IN 1972, WHEN ALL DEVELOPING COUNTRIES WERE CLEARLY URGED TO ADOPT LAWS PROTECTING THEIR MERCHANT MARINES, IN ORDER THUS TO OBTAIN GREATER PARTICIPATION IN THE OCEAN TRANSPORT OF THE TRADE GENERATED IN THEIR OWN COUNTRIES. THIS GAVE RISE TO UNCTAD III OF 1972 TO THE RESOLUTION TO PROMOTE THE SHIPPING CONDUCT CODE, ON THE BASIS OF A 40-40-20 SHARING OF AVAILABLE OCEAN TRAFFIC.

(PARA UNNUMBERED) WITH THIS INSTRUMENT EACH DEVELOPING COUNTRY CAN NEGOTIATE WITH AN INDUSTRIALIZED COUNTRY THAT HAS A POWERFUL SHIPPING FLEET THE TRANSPORT OF 80 OF THE CARGO (40-40). THAT IS TO SAY, WITH THIS INSTRUMENT, THE NEGOTIATING CAPACITY OF A COUNTRY SUCH AS GUATEMALA IS INCREASED FOR DEMANDING A SHARE IN THE OCEAN TRAFFIC OF THOSE INDUSTRIALIZED AND TRADITIONALLY MARITIME SHIPPING COUNTRIES--SOMETHING WHICH A FEW YEARS AGO WOULD HAVE BEEN IMPOSSIBLE.

(PARA UNNUMBERED) THIS RESOLUTION OF UNCTAD, WHICH WAS APPROVED BY ALL OF THE DEVELOPING COUNTRIES, WAS ALSO LIMITED OFFICIAL USE
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PAGE 05 STATE 059755

RECEIVED WITH UNDERSTANDING AND A BROAD SENSE OF COOPERATION BY MANY INDUSTRIALIZED COUNTRIES--AMONG THEM THE FEDERAL REPUBLIC OF GERMANY, JAPAN, FRANCE, THE NETHERLANDS, ITALY, AND SPAIN--ASSURING A PARTICIPATION OF MORE THAN 80 OF THE WORLD TONNAGE, AS ADVOCATED BY THE CONDUCT CODE AND THE 40-40-20 FORMULA.

(PARA UNNUMBERED) THE UNITED STATES, UNITED KINGDOM, CANADA, AND THE SCANDINAVIAN COUNTRIES, THE LATTER BEING BY TRADITION THE OWNERS OF GREAT SHIPPING FLEETS THAT ENGAGE IN TRAFFIC BETWEEN THIRD COUNTRIES, VOTED AGAINST THE RESOLUTION.

(PARA UNNUMBERED) FOR 30 YEARS LATIN AMERICA HAS BEEN STRUGGLING TO WIN POSITIONS STEP BY STEP, TO SHAKE ITSELF FREE OF THE SITUATION OF ECONOMIC DEPENDENCE TO WHICH GUATEMALA, AS A COUNTRY ON THE PERIPHERY, IS SUBJECT. THE TOPIC OF MARITIME TRANSPORT HAS BEEN ANALYZED IN A GREAT MANY INTERNATIONAL FORUMS SUCH AS ECLA, OAS, IA-ECOSOC, SIECA, AND UNDOUBTEDLY IT WILL BE BROUGHT UP AGAIN BY THE RECENTLY CREATED SELA. AT THE ECONOMIC CONFERENCE OF THE OAS HELD IN BUENOS AIRES IN 1957, IT WAS SPECIFIED THAT THE LAWS PROTECTING THE MERCHANT MARINES OF THE MEMBER COUNTRIES OF THE OAS WOULD NOT BE CONSIDERED DISCRIMINATORY. THE UNITED STATES PARTICIPATED IN THAT MEETING, ABSTAINING BUT NOT VOTING AGAINST THAT MEASURE.

(PARA UNNUMBERED) CONCLUSIONS: IN VIEW OF THE PRECEDING

STATEMENTS, THE PRESSURE OF THE DEPARTMENT OF STATE, TO WHICH REFERENCE WAS MADE IN THE FOREGOING PARAGRAPHS, IS NOT CONGRUENT WITH THE POSITION ADOPTED BY THE UNITED STATES IN RECENT YEARS IN THE MATTER OF INTERNATIONAL TRADE, AND ESPECIALLY AT THE SEVENTH SPECIAL GENERAL ASSEMBLY OF THE UNITED NATIONS, HELD SEPTEMBER 1 TO 15, 1975. NEITHER IS IT CONGRUENT WITH THE COMMITMENTS THAT HAVE BEEN INTERNATIONALLY ACQUIRED WITH RESPECT TO MARITIME TRANSPORT.

(PARA UNNUMBERED) CONSEQUENTLY, I BELIEVE THAT THE GOVERNMENT OF THE UNITED STATES SHOULD REVIEW THE ACTION OF THE FMC AND THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS WITH RESPECT TO THE INSISTENCE THAT LIMITED OFFICIAL USE
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PAGE 06 STATE 059755

GUATEMALA REPEAL A LAW THAT HAS BEEN IN FORCE FOR FIVE YEARS AND THAT WAS ADOPTED IN THE EXERCISE OF NATIONAL SOVEREIGNTY. IN ANY EVENT, IT MUST BE KEPT IN MIND THAT THE GOVERNMENT OF GUATEMALA IS MAKING AN EXHAUSTIVE ANALYSIS OF THE ENTIRE POLICY AND LEGISLATION CONCERNING TRANSPORT, AND IN DUE COURSE, WITHOUT PRESSURE, THE CONGRESS WILL PROPOSE LEGISLATION THAT MAY BE MORE DESIRABLE FOR THE COUNTRY AND FOR GOOD INTERNATIONAL TRADE RELATIONS WITH FRIENDLY COUNTRIES. END QUOTE. INGERSOLL

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